Supreme Court, U.S.
FILED

No. 091073 DEC 22 2009

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Tammy J. Shaw---Petitioner

vs

Lynchburg Department of Social Services, et al---
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Tammy J. Shaw
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QUESTIONS PRESENTED

1. The U. S. Court of Appeals affirmed the judgment of the District Court in a decision made on a federal question in relation to the Rooker-Feldman Doctrine that conflicts with a relevant decision of the U.S. Supreme Court.
2. The U.S. Court of Appeals affirmed the decision of the District Court not to allow the non-lawyer parent, petitioner, to litigate pro se in a federal court action on behalf of a child, an important federal question that has not been, but is requested to be, settled by the U.S. Supreme Court.
3. The U.S. Supreme Court has not ruled on the Constitution proclaiming safeguards positive as well as negative in protection of rights and liberties of its citizens. A ruling regarding "in-actions" triggering the Due Process Clause in the same manner as "actions" could assure equal protection of the law.

LIST OF PARTIES

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IN THE SUPREME COURT OF
THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears as Appendix A to the petition and is unpublished. The opinion of the United States District Court appears as Appendix B.

JURISDICTION

The date in which the United States Court of Appeals decided my case was September 22, 2009. No petitions for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). An extension of time to file the petition for a writ of certiorari was granted to and including March 1, 2010 on December 31, 2009.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Law 92-4382, 92XXXVII, 92XXXVII(G), 92XXVII(G)18, 92k4382k "The concept of familial privacy protected by the due process clause is limited to two areas (1) thwarting

governmental attempts to interfere with particularly intimate family decisions, and (2) voiding government action that sever, alter, or otherwise affect the parent/child relationship." U.S.C.A. Const. Amend. 14

Civil Rights 78-1325, 78, 78III, 78k1323, 78k1325k "Section 1983's "color of state law" requirement excludes from the reach of 1983 all merely private conduct, no matter how discriminatory or wrongful but includes within its scope apparently private actions which has a sufficiently close nexus with the state to be fairly treated as that of the state itself." 42 U.S.C.A. 1983

Civil Rights 78-1018, 78, 781, 78k1016, 78k1018k "To establish Rehabilitation Act Claim, a plaintiff must prove that she was discriminated against due to discrimination solely on the basis of the disability. Rehabilitation Act of 1973 504 (a) 29 U.S.C.A. 794 (a)

Civil Rights 78-1354, 78, 78III, 78k1353, 78k1354k "The requirements for holding a municipality liable under 1983 for unconstitutional acts by a municipal employee below the policy making level apply not only in actions against local governments, but also in actions against individually named municipal agents, sued in their official capacities." 42 U.S.C.A. 1983

Malicious Prosecution 249-14, 249I, 249k14k "Under Virginia Law, in malicious prosecutions stemming from civil proceedings, a plaintiff must allege and prove arrest of his person, seizure of his property, or some special injury."

Conspiracy 91-7.5(1), 911(A), 91k 7.5, 91k.5 (1) k "For a claim to be stated for conspiracy to interfere with civil right through depriving persons of rights or privileges, there must be some racial, or perhaps otherwise class-based invidiously animus behind the alleged conspirators' action." 42 U.S.C.A. 1985 (3)

Civil Rights 78-1355, 78, 78III, 781353, 78k1355k: "Supervisory liability under 1983 is ultimately determined by pinpointing the persons in the decision-making chain whose deliberate indifference permitted the constitutional abuses to continue unchecked." 42 .U.S.C.A. 1983

Civil Rights 78-1397, 78, 78III, 78k1392, 78k1397k: "A 1983 plaintiff seeking to hold a municipality liable for unconstitutional acts by a municipal employee below the policymaking level must adequately plead and ultimately prove three elements: (1) the existence of an official policy or custom (2) that is fairly attributable to the municipality (3) that proximately caused the underlying constitutional violation. 12. U.S.C.A. 1983

Civil Rights 78-1352 (1), 78, 78III,78k1342, 78k1352 (1)k: " Failure to train municipal employees is a valid theory to establish municipal liability under 1983." 42 U.S.C.A. 1983

Negligence 272-273, 272, 272V, 272V, 272k273k: "Under Virginia law, 'gross negligence' is negligence which shocks fair-minded people, but is less than willful recklessness."

Health 198H-611, 198H, 198HV, 198HV (B), 198 Hk611k: To prevail in an action for professional

malpractice under the Virginia Medical Malpractice Act a plaintiff must (1) establish the standard of care; (2) demonstrate that the defendant's actions breached the standard of care; and prove that the defendant's breach was the proximate cause of the plaintiff's injuries." West V.C.A. 8.01-581.1

Virginia Codes: 63.2-1503, 63.2-1506, 63.2-1520, 63.2-1505, 16.1-266(G), 63.2-1509(A)(D), 63.2-1502(6)(12)(13), 51.5-40 and 54.1-3909

Virginia Administrative Codes: 22VAC40-705-80(b)(1), 22VAC40-7050-120(d), 22VAC40-705-150(a), 22VAC40-705-140(D)

STATEMENT OF CASE

The original complaint filed July 28, 2008 and the Amended Complaint filed November 24, 2008 contain claim(s) based on an act against petitioner's constitutional rights under 42 U.S.C.1983 by respondent(s) with claim stated in Complaint.

The petitioner's complaint does not seek recourse of any state court decision, nor does it contain a constitutional issue that could have been reviewed on direct appeal by the state appellate courts. Following the dismissal of a case that the respondents, as plaintiffs, fraudulently began, ex parte, August, 2006, and having not the statutory right to do so,

(Virginia Code 16.1-253), the respondent(s), as plaintiffs, did not appeal the dismissal, rendering the constitutional issues unaddressed. The dismissal by the lower court and absence of appeal by the respondent(s), as plaintiffs, avoided this petitioner , as a defendant, the opportunity to raise constitutional issues. The constitutional issues brought before the District Court do not require a judgment or review of any state court decision, therefore, this Complaint should not be barred from consideration under the Rooker-Feldman Doctrine.

Petitioner believes the facts presented in Informal Brief (Appendix C-Issue 1) will aid the Court in making a determination to this federal question presented.

Petitioner alleges other constitutional violations throughout the Complaint. Count 24 alleges constitutional right violation under 1983, Fourteenth Amendment, Section 1 with procedural component of our Constitution phrased as limitation on State's power to act, with intrusion by respondent(s) as arbitrary abuses of power, employing it as an instrument of oppression, intruding into parent-child relationship.

The specifics throughout the Complaint, count-by-count, reveal acts alleged as conspiracy against rights, argued to the U.S. Court of Appeals in Informal Brief (Appendix C-Issue 4).

Respondent(s) failed to report abuse allegations to the Commonwealth Attorney, as required by Virginia Code 63.2-1503(D), an "inaction" that

denied access to the courts, one such inaction raising the federal question of "inactions" presented.

The constitutional issues are of such nature that more than one jurisdictional claim under 1983 lies within Complaint. A constitutional claim under 1983 on behalf of petitioner is contained within state tort claim of malicious prosecution, with specifics in Count 14 that meet the requirements of Rule 12(b)(6). The Constitution, under due process, forbids government actions that sever, alter of otherwise affect the parent/child relationship. The U.S. Constitution allows states the power to govern themselves, however, where violations of the Constitution are present, as in this case, Constitutional law trumps state law.

Upon proof of false statements in affidavit, stated within the Amended Complaint, Count 14, the procedural due process rights of the children are violated.

Respondent(s) submitted false statements in affidavit, August 2006, to resume visitation knowing, by participation, that the court ceased such visitation with the father by issuance of a protective order, June 15, 2006, against same. This is a direct conflict of facts stated by the District Court in Memorandum Opinion Page 4, Footnote 3, argued in Informal Brief to U.S. Court of Appeals.

Petitioner believes that unique circumstances exist and are within the Complaint, worthy of broadening the general rule of pro se on behalf of a child, creating cause of federal question.

Infants 211 - 17, 211 k 17k. "Alleged actions of county child protective services caseworker of submitting knowingly false statements in her affidavit in support of child's emergency removal to court, if proven, violated child's procedural due process rights." USCA Const Amend 14.

Although the alleged constitutional violations of the children are intertwined with those of petitioner, a 1983 claim remains on behalf of petitioner to be considered, if pro se on behalf of children is not permitted.

REASONS TO GRANT

The dismissal by the District Court, affirmed by the U.S. Court of Appeals, was due to the alleged improper use of the Rooker-Feldman Doctrine, with the District Court further referencing the Doctrine as jurisdictional. The dismissal also relied upon the making of a decision based on a federal question of which the U.S. Supreme Court has not yet ruled. Both reasons were argued to the U.S. Court of Appeals.

With the use of the Rooker-Feldman and the dismissal that followed, the District Court declined to exercise its supplemental jurisdiction over state law claims, causing the alleged constitutional violations within to remain unheard by any court, further preventing the existing unique circumstances, argued by petitioner for pro se filing on behalf of a child, from being considered.

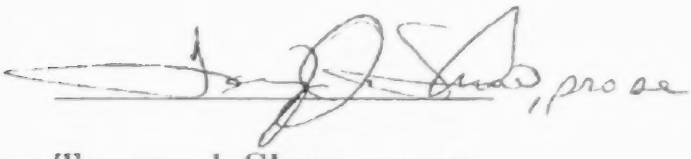
Beyond the federal question of pro se on behalf of a child, there remains constitutional claim under 42 U.S.C. 1983, Fourteenth Amendment, Section 1 for this petitioner. The Amended Complaint contains specifics of the actions and inactions by the respondents that are alleged as wholly arbitrary and irrational, providing a clear example of the oppression existing in our land, creating a need for federal interest.

Wherefore, this petitioner prays that the unconstitutional and criminal acts and the misuse of the power and authority entrusted by the courts and the people be heard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Tammy J. Shaw, pro se

Date: March 1, 2010

FILED: September 22, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1210
(6:08-cv-00022-nkm-mfu)

Tammy J. Shaw, KGS, minor by her next friend; CAS, minor by her next friend; CJS, minor by her next friend.

Plaintiffs-Appellants

v

Lynchburg Department of Social Services; Bob McDonnell, State Attorney General; Eleanor Dunn, Deputy City Attorney; Tim Kaine; Sally Barca: Lisa Parks; Dr. A. J. Anderson, Investigator Robert W. Moore.

Defendants—Appellees

JUDGMENT

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1210

Tammy J. Shaw; KGS, minor by her next friend; CAS, minor by her next friend; CJS, minor by her next friend.

Plaintiffs-Appellants

v.

Lynchburg Department of Social Services; Bob McDonnell, State Attorney General; Eleanor Dunn, Deputy City Attorney; Tim Kaine; Sally Barca; Lisa Parks; Dr. A.J. Anderson; Investigator Robert W. Moore.

Defendants—Appellees

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Norman K. Moon, District Judge. (6:08-cv-00022-nkm-mfu)

Submitted: September 15, 2009 Decided: September 22, 2009

Before GREGORY and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Tammy J. Shaw, Appellant Pro Se. Alexander W. Bell, Bell & Schneider, PLC, Lynchburg, Virginia; Paul Kugelman, Jr., OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Nora Beth Dorsey, Daniel M. Kincheloe, Jodi Beth Simopoulos, HANCOCK, DANIEL, JOHNSON & NAGEL, PC. Glen Allen Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tammy J. Shaw appeals the district court's order denying relief on her 42 U.S.C. 1983 (2006) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the

reasons stated by the district court. Shaw v. Lynchburg Dep't of Soc. Servs.. No. 6:08-cv-00022-nkm-mfu (W.D. Va, Jan. 29, 2009). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Filed January 29, 2009 in U.S. District Court at Lynchburg, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

Civil No: 6:08CV00022
ORDER
JUDGE NORMAN K. MOON

Tammy J. Shaw, et al., pro se
Plaintiffs

v.

Lynchburg Dept. of Social Services, et al.
Defendants

This matter is before the Court on the Federal Rule of Civil Procedure 12(b)(6) motions to dismiss filed by the Lynchburg Department of Social Services ("LDSS"), Eleanor Dunn, Sally Barca, Lisa Parks, and Robert Moore (collectively, the "Lynchburg Defendants")(docket no. 27), Governor Tim Kaine and Attorney General Bob McDonnell (docket no.7) and Dr. A.J. Anderson (docket no.11), the motion to quash service filed by the Lynchburg Defendants(docket no 26), and Shaw's motion to deny Kaine and McDonnell's motion to dismiss (docket no.16), motion for summary judgment (docket no. 18), motion to deny Dr. Anderson's motion to dismiss (docket no. 19), motion for joinder of real parties in

interest (docket no. 31), motion for Alexander Bell to be withdrawn as counsel (docket no. 33), motion to deny the Lynchburg Defendants' motion to dismiss (docket no.39), motion for miscellaneous relief (docket no. 41). For the reasons set forth in the accompanying Memorandum Opinion:

1. Each of the Defendants' separate motions to dismiss (docket nos. 7, 11, 27) are GRANTED. All counts of Shaw's Amended Complaint are dismissed, with prejudice;
2. Shaw's motions to deny the motions to dismiss (docket nos. 16, 19, 39) are DENIED;
3. Shaw's motion for summary judgment (docket no.18) is DENIED;
4. The Lynchburg Defendants' motion to quash service (docket no. 26) is DENIED as MOOT;
5. Shaw's motion for joinder of real parties in interest (docket no. 31) is DENIED;
6. Shaw's motion for Alexander Bell to be withdrawn as counsel (docket no.33) is DENIED; and
7. Shaw's motion for miscellaneous relief (docket no. 41) is DENIED.

Accordingly, the Court hereby TERMINATES this case and ORDERS it stricken from the active docket. The Clerk of the Court is hereby directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record and to Shaw.

It is so ORDERED.

Entered this 29th day of January, 2009.

/s/ Norman K. Moon

UNITED STATES DISTRICT JUDGE
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION.

Civil No. 6:08CV00022
MEMORANDUM OPINION
JUDGE NORMAN K. MOON

Tammy J. Shaw, et al., pro se
Plaintiffs

v

Lynchburg Dept. of Social Services, et al.
Defendants

This matter is before the Court on the Federal Rule of Civil Procedure 12(b)(6) motions to dismiss filed by the Lynchburg Department of Social Services ("LDSS"), Eleanor Dunn, Sally Barca, Lisa Parks, and Robert Moore (collectively, the "Lynchburg Defendants") (docket no. 27), Governor Tim Kaine and Attorney General Bob McDonnell(docket no.7), and Dr. A.J. Anderson(docket no.11) as well as the motion to quash service filed by the Lynchburg Defendants (docket no. 26) and several miscellaneous motions filed by Shaw (docket nos. 16, 18, 19, 31, 33, 39, 41). Because the Court lacks jurisdiction over Shaw's 1983 claim under the Rooker-Feldman doctrine and because Shaw fails to state a claim

under the ADA and the Rehabilitation Act, I will dismiss all counts of Shaw's Amended Complaint in a separate Order to follow. I decline to exercise supplemental jurisdiction over the remaining state law claims. For reasons that will be explained below, I will also deny as moot the motion to quash service filed by the Lynchburg Defendants and deny all of Shaw's miscellaneous motions.

I. BACKGROUND [1]

Tammy Shaw attempts to state claims on her own behalf, as well as on behalf of her minor children, KGS, CAS, and CJS, against the defendants in both their official and individual capacities for the deprivation of due process in violation of 42 U.S.C, 1983, violations of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, and violations of various state laws. These claims arise from actions that were allegedly taken (or not taken) during investigations, determinations and judicial and administrative hearings concerning child abuse allegation and counter-allegations made between Shaw and her ex-husband, the father of KGS, CAS, and CJS, The investigations and hearings at issue were conducted between 2005 and 2008 in the Juvenile and Domestic Relations Court("JDR Court") for the City of Lynchburg, the JDR Court and Circuit Court for the County of Amherst, and before the Virginia

1 Except where otherwise noted, the facts recited here are derived from the Amended Complaint. As required in the analysis of dismissal motions, these facts are assumed to be true for purposes of the motions. See e.g. Edwards v. City of Goldsboro, 178 F. 3d 231, 244 (4th Cir. 1999).

Department of Social Services. Aside from Governor Kaine and Attorney General McDonnell, the majority of the individual defendants are employees of the City of Lynchburg. Sally Barca is a caseworker with LDSS. Lisa Parks is also a caseworker and is Barca's direct supervisor at LDSS. Robert Moore is an investigator with the Lynchburg Police Department who works with LDSS. Eleanor Dunn is a deputy city attorney who represents LDSS on the City's behalf. Dr. A.J. Anderson is a licensed clinical psychologist. While Dr. Anderson is not employed by the City of Lynchburg, he conducted court-ordered psychological evaluations of Plaintiff's children in March, 2006.

The thrust of Shaw's rather prolix Amended Complaint is that several of the defendants violated her and/or her children's constitutional and statutory rights by suppressing credible evidence of physical and sexual abuse of Shaw's children by their father, providing misleading or false testimony at various custody hearings, and creating a false perception that Shaw's children were suffering from "parental alienation syndrome"[2] as a result of Shaw's actions.

2 "The parental alienation syndrome is a disorder that arises primarily in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent." R.A. Gardner, The Parental Alienation Syndrome (2d ed. 1998)

Shaw claims that the alleged actions by the defendants resulted in the destruction of her credibility and the ultimate abrogation of at least some of her custody rights over the children.3 Shaw also claims that Moore and Barca failed to provide the assistance of a qualified speech therapist for CJS, who suffers from a speech handicap, during an interview concerning allegations of sexual abuse against the child's father in April, 2007. Shaw filed the instant lawsuit on July 28, 2008, seeking redress under 42 U.S.C. 1983 for the defendants' alleged violations of her and her children's liberty interests under the Fourteenth Amendment, and under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act for the alleged failure to properly accommodate CJS.4 Shaw also asserts Virginia state law claims against all the defendants for violations of the Virginia Constitution and various sections of Virginia Code, against Dr. Anderson for malpractice, and against Dunn for violation of disciplinary rules governing attorney conduct.

3 It appears that Shaw is alleging that, as a result of the defendants' efforts, a protective order was entered against her in Amherst JDR Court on June 15, 2006 and that Shaw's ex-husband was awarded at least partial custody rights over the children in Amherst Circuit Court in September, 2008.

4 Shaw's Amended Complaint is ninety-six pages long and contains twenty-four different "counts". Many of the "counts" however, address the same conduct and allege violations of the same laws. I will address each potential legal claim identified, along with the alleged conduct that might be relevant to each claim. Instead of disposing of individuals "counts", I will dispose of the individual legal claims identified in the Amended Complaint

II. STANDARD OF REVIEW

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir.1999). In considering a Rule 12(b)(6) motion, a court must accept all allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff. See id at 244; *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 254-55 (W.D.Va.2001)

Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v Twombly*, 127 S.Ct.1955, 1964-65 (2007)(alteration in original omitted)(citations omitted) (internal quotation marks omitted). Instead, "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id at 1965 (citations omitted). Rule 12 (b)(6) does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face:"; plaintiffs must "nudge their claims across the line from conceivable to plausible" or "their complaint must be dismissed." Id. At 1974. As the Fourth Circuit has held, a plaintiff "must sufficiently allege facts to allow the

Court to infer that all elements of each of his causes of action exist." *Jordan v. Alternative Res. Corp.*, 458 F.3d 332, 344-345 (4th Cir.2006).

Because pro se complaints "represent the work of an untutored hand requiring special judicial solicitude," courts must construe them liberally. *Baudette v. City of Hampton*, 775 F.2d 1274, 1277-1278 (4th Cir. 1985). Dismissal of a pro se complaint is thus only appropriate when it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines v. Kerner*, 404 U.S. 519, 521 (1972)(internal quotations omitted). Courts need not, however, "conjure up questions never squarely presented to them...Even in the case of pro se litigants, they cannot be expected to construct full blown claims from sentence fragments." Id. At 1278. The requirement of liberal construction does not mean that courts can ignore a clear failure in the pleading to allege facts that set forth a cognizable claim. See *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir 1990).

III.DISCUSSION

Even when analyzed under the liberal pro se standard of review for motions to dismiss, the Amended Complaint fails to state any claims for which relief may be granted. As the following sections will explain, the Court lacks jurisdiction over the 1983 claim under the *Rooker-Feldman* doctrine, and the ADA and Rehabilitation Act claims fails because Shaw is

prohibited from litigating them pro se on her children's behalf.

A. *ROOKER-FELDMAN* DOCTRINE

Although none of the parties address the *Rooker-Feldman* doctrine with any specificity in their briefs, it may be raised by the Court sua sponte before considering the merits of a claim because it is a jurisdictional doctrine. *See Friedman's Inc. v Dunlap*, 290 F.3d 191, 195 (4th Cir 2002); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)("Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case." The *Rooker-Feldman* doctrine prohibits "lower federal courts from considering not only issues raised and decided in the state courts, but also issues that are "inextricably intertwined" with the issues that were before the state court." *Washington v. Wilmore*, 407 F.3d 274, 279 (4th Cir.2005)(quoting *D.C. Court of Appeals v.*

Feldman, 460 U.S. 462, 486 (1983). Accordingly, when the success of a federal claim depends upon a determination "that the state court wrongly decided the issues before it," a federal court lacks jurisdiction to entertain its merits, *See Wilmore*, 407 F.3d at 279 (citing *Brown & Root v. Breckenridge*, 211 F.3d 194,198(4th Cir. 2000)(citations omitted)). The doctrine ensures that federal district courts exercise only original jurisdiction and guarantees that

review of state court judgments is conducted at the federal level only by the U.S. Supreme Court, as Congress intended. *See Brown & Root, Inc.* 211 F.3d at 198-99.

Shaw's 1983 claim is barred from consideration by the *Rooker-Feldman* doctrine because it is "inextricably intertwined" with issues that were already considered and decided in custody hearing by several state courts, particularly the Amherst County JDR Court and Circuit Court. These issues include, but are not necessarily limited to, allegation that LDSS and its caseworkers failed to properly follow up on various allegations of physical and sexual abuse lodged by Shaw against her children's father, that Barca worked with Dr. Anderson to compile evidence of parental alienation by Shaw, and that Barca and Dr. Anderson provided false or misleading statements in custody hearings. While Shaw attempts to re-hash these issues in federal court, the state courts already considered these issues and weighed the evidence presented by the defendants in the various custody hearings. This Court may not re-weigh the evidence and credibility of witnesses that were before the state courts in the various custody proceedings. Recognizing that Shaw's due process rights were violated in light of the defendants' alleged misconduct would require a determination that one or all of the state courts wrongly decided the issues before them. This Court is prohibited from making such determination.

Numerous other courts have applied the *Rooker-Feldman* doctrine in cases similar to Shaw's where a parent claims that the state court decision was unconstitutional or was premised upon

constitutional violations by agents of the state. *See, e.g. Hoblock v. Albany County Bd. Of Elections*, 422 F.3d 77, 87 (2d Cir.2005); *Simmons v. Huff*, 70 Fed.Appx. 136 (E.D. Va.2003); *Duby v. Morgan*, 901 F. Supp. 215, 216 (S.D. W.Va.1995). If Shaw wishes to address the alleged violations of due process that occurred in conjunction with the state court proceedings, she may not lodge a collateral attack in federal court; she must instead seek recourse in the state court system. *See Feldman*, 460 U.S. at 482; *Anderson v. Colorado*, 793 F 2d 262, 263(10th Cir. (1986)("Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. 1983.") Because the Court lacks jurisdiction to entertain Shaw's 1983 claim under *Rooker-Feldman* doctrine, it must be dismissed. It is unnecessary to pass on the merits of the claim or any deficiencies in the claim that were presented by the defendants in the motions to dismiss.

B. SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE ADA

Shaw also attempts to bring claims on behalf of her minor child CJS under 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). The factual basis of both of these claims is that Barca and Moore failed to properly accommodate CJS in an April, 2007 interview concerning allegations of sexual abuse against the child's father. Shaw claims that Moore and Barca should have obtained the assistance of a qualified

constitutional violations by agents of the state. *See, e.g. Hoblock v. Albany County Bd. Of Elections*, 422 F.3d 77, 87 (2d Cir.2005); *Simmons v. Huff*, 70 Fed.Appx. 136 (E.D. Va.2003); *Duby v. Morgan*, 901 F. Supp. 215, 216 (S.D. W.Va.1995). If Shaw wishes to address the alleged violations of due process that occurred in conjunction with the state court proceedings, she may not lodge a collateral attack in federal court; she must instead seek recourse in the state court system. *See Feldman*, 460 U.S. at 482; *Anderson v. Colorado*, 793 F 2d 262, 263(10th Cir. (1986)("Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. 1983.") Because the Court lacks jurisdiction to entertain Shaw's 1983 claim under *Rooker-Feldman* doctrine, it must be dismissed. It is unnecessary to pass on the merits of the claim or any deficiencies in the claim that were presented by the defendants in the motions to dismiss.

B. SECTION 504 OF THE REHABILITATION ACT AND TITLE II OF THE ADA

Shaw also attempts to bring claims on behalf of her minor child CJS under 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). The factual basis of both of these claims is that Barca and Moore failed to properly accommodate CJS in an April, 2007 interview concerning allegations of sexual abuse against the child's father. Shaw claims that Moore and Barca should have obtained the assistance of a qualified

speech therapist to assist with the interview because CJS has a severe speech handicap that renders her unable to communicate effectively.

These claims, unlike Shaw's 1983 claim, are not categorically barred from consideration under the *Rooker-Feldman* doctrine. It does not appear that the allegations that Shaw lodges on CJS's behalf are "inextricably intertwined" with issues that were raised and considered in the state court custody proceedings, or that rendering judgment in Shaw's favor on these claims would require a determination that the state courts wrongly decided the issues before them. In other words, this Court could find that CJS's rights were violated under the ADA and the Rehabilitation Act without re-weighing the evidence and the credibility of witnesses that were before the state courts in the various custody proceedings and without implying that any of the state court judgment abrogating Shaw's custody rights were wrongly decided.

Regardless, these claims fail because Shaw is prohibited from litigating them pro se on CJS's behalf. It is well-settled that, absent unique circumstances, a parent may not litigate a claim pro se on behalf of her children. *Myers v. Loudon County Public Schools*, 418 F. 3d 395, 401 (4th Cir. 2005)("non-attorney parents generally may not litigate the claims of their minor children in federal court.") *see also Gallo v. United States*, 331 F. Supp. 2d 446, 447 (E.D.Va, 2004)(noting that "courts are nearly unanimous in holding that a parent or guardian cannot

sue on behalf of a child without securing counsel.")[5] "The right to litigate for oneself...does not create a coordinate right to litigate for others." *Myers*, 418 F.3d at 400 (emphasis in original). By permitting the layman to litigate only for himself, this restriction protects the rights of those before the court while also safeguarding the court and the pro se litigant's adversaries "from poorly drafted, inarticulate, and vexatious claims." Id. (citing *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975)); *Collinsgru v. Palmyra Bd. Of Educ.*, 161 F. 3d 225, 231 (3d Cir. 1998). Because any alleged actions by Barca or Moore would be violations of CJS's (not Shaw's) rights under the Rehabilitation Act and the ADA, Shaw lacks standing to litigate these claims pro se on CJS's behalf.[6] The claims must be dismissed.

5 Courts have allowed parents to litigate pro se on behalf of their children in the special context of appeals of administrative denials of social security income (SSI) benefits. *See e.g. Machadio v. Apfel* 276 F.3d 103, 106 (2d Cir. 2002); Harris v Apfel, 209 F.3d 413, 417 (5th Cir.2000). In Myers, the Fourth Circuit noted that parents might be permitted to litigate their children's claims in the context of an SSI appeal because of "the unique policy considerations involved in such cases." Myers, 418 F.3d at 401, n.7. Such unique considerations are not present in this case and I decline to broaden the exception to the general rule prohibiting parents from litigating their children's claims pro se.

6 For similar reasons, Shaw's "motion for joinder of the real parties in interest" should be denied. In the motion, Shaw asks the Court to join her children as plaintiffs in the case pursuant to Federal Rule of Civil Procedure 17(a)(3). Regardless of whether Shaw's children were properly joined as plaintiffs in this case, however, the Rehabilitation Act and the ADA claims would fail because Shaw is prohibited from litigating those claims pro se on her children's behalf.

C. STATE LAW CLAIMS

The Amended Complaint contains claims against all the defendants for violations of the Virginia Constitution and numerous sections of the Virginia Code, against Dr. Anderson for malpractice, and against Dunn for violations of disciplinary rules governing attorney conduct. A district court may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. 1367. Because all of the federal claims over which this Court has original jurisdiction should be dismissed, I decline to exercise supplemental jurisdiction over Shaw's various state law claims.

D. MISCELLANEOUS MOTIONS

In addition to the motions to dismiss, several other motions are ripe for decision. The first concerns the manner in which Shaw attempted to serve the Lynchburg Defendants. After filing the Amended Complaint, Shaw left a copy of it and the summons with individuals who sat at the front desks of the office buildings where each of the Lynchburg Defendants worked (Barca and Parks at the front desk of LDSS, Dunn at the front desk of Lynchburg City Hall, and Moore at the front desk of the Lynchburg Police Station.) Because the Lynchburg Defendants believed that Shaw did not accomplish proper service under Federal Rule of Civil

Procedure 4(e), they did not respond to the Amended Complaint within the twenty-day deadline set forth in the summons. On January 2, 2009, Shaw filed a

"motion for summary judgment", requesting that the Court enter default judgment in her favour against the Lynchburg Defendants in light of their failure to respond to the Amended Complaint. On January 7, 2009, the Lynchburg Defendants filed a motion to quash service, which explained that they did not respond to the Amended Complaint because service was insufficient under Rule 4(e). Because this case must be dismissed for the reasons already stated, however, I decline to address the issue of whether the Lynchburg Defendants were properly served under Rule 4(e), The motion to quash service is therefore moot and should be denied. 7For the same reasons, default judgment in Shaw's favour would be inappropriate under these circumstances, and her "motion for summary judgment" should be denied.

Finally, Shaw also filed a motion requesting that the Court enter an order requiring Alexander Bell, counsel for the Lynchburg Defendants, to withdraw from this case on the grounds that he is not authorized to appear as "special counsel" under Virginia Code 2.2-507 and -510. Because this case should be dismissed for the jurisdictional and substantive reasons already discussed and because the deficiencies in Shaw's pleadings are apparent on their face irrespective of any filings that were made by the Lynchburg Defendants, Shaw's motion to have Bell withdrawn as counsel is moot and should be denied.

7 For the same reasons, Shaw's motion for miscellaneous relief (docket no. 41) should also be denied.

IV. CONCLUSION

The Amended Complaint must be dismissed because the Court lacks jurisdiction to entertain Shaw's 1983 claim and because Shaw may not litigate the ADA and Rehabilitation Act claims pro se on her children's behalf. I decline to exercise supplemental jurisdiction over the remaining state law claims. I will grant the defendants' motions to dismiss in a separate Order to follow. [8] The remainder of outstanding motions will be denied. The clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion and the accompanying Order to all counsel of record and to Shaw.

Entered this 29th day of January, 2009.

/s/ Norman K. Moon

UNITED STATES DISTRICT JUDGE

8 Counsel for Kaine and McDonnell scheduled a hearing on the motions to dismiss for March 13, 2009. In the interest of efficiency, I will decline to hold a hearing on any of these motions. The facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

Case No. 09-1210
Tammy Shaw
v.
Lynchburg Department of Social Services
6:08-cv-00022-nkm-mfu

1. (A) United States District Court Western District of Virginia

   (B) January 29, 2009

2. N/A

3. Issues for Review

   (1) Shaw alleges that the Rooker-Feldman doctrine is not applicable in this case, wherefore, the Complaint should not be barred from consideration due to such doctrine.

   Supporting Facts and Argument

This lawsuit was not filed seeking redress as referenced in "Memorandum Opinion", page 3, January 29, 2009. Shaw filed suit to address the intentional or willful misconduct and malicious purpose of actions taken by the defendants with disregard and disrespect of law(s) and the Constitutional rights of the Shaws. This 1983 claim

is not "inextricable intertwined" with issues that have been considered and decided in various hearings. Shaw would like to clear a mention of "various custody hearings" referenced in "Memorandum Opinion", page 6 January 29, 2009, briefly, there has not been various custody hearings. In brief, Shaw, mother was given sole legal and physical custody of each at the divorce hearing in March, 2006, and Shaw, mother, had agreed to share custody for high school preferences of one child which was heard and made order of court in September, 2008, with joint legal of siblings. Shaw did not appeal this decision and has not invited the district court to review or reject any such judgment of a state court. The "Memorandum Opinion", page 3, footnote 3, January 29, 2009, states that a protective order was entered against her, Shaw, in Amherst JDR Court on June 15, 2006. To the contrary, it was entered against the father of the children, at the request of Shaw realizing that no one with authority to stand for the children were taking action(s) to see to the safety of the children as is shown in the Amended Complaint. This protective order is made part of the complaint with direct relation to the allegations of the defendant(s) obstruction of justice, violating the constitutional rights of the Shaws under 42 U.S.C. 1983 Fourteenth Amendment-Section 1—not to redress any judgment of a Court. Regardless of the defendant(s) attempt and support to prevent this P.O. against the father, it was entered. With full knowledge of the issuance of this protective order and participation in this hearing, the defendant(s)

later approached the Court to obtain an ex parte protective order against Shaw, denying to the court participation in any other hearing and with support of a multidisciplinary team member claimed to be the Guardian ad Litem for the children.

This constitutes a fraudulent act, interfering with justice and violating the Constitutional rights of Shaw and the children under 42 U.S.C. 1983 Fourteenth Amendment Section 1. The case of this ex parte was dismissed with no protective order being issued against Shaw. This is introduced in Count 4, Page 3, and detailed as "malicious prosecution" in Count 14 of the Amended Complaint. Citation: A function is governmental if "directly tied to health, safety and welfare of the citizens." Niese 564 S.E. 2d at 131. 'By contrast, when a municipality performs a proprietary or commercial function, it is not entitled to sovereign immunity." Niese 564 S.E. 2d at 132

In 2005, the Supreme Court revisited the doctrine in Exxon Mobil Corp. v Saudi Basic Industries Corp. 544 U.S. 280(2005). The Court affirmed that the Rooker-Feldman doctrine was statutory (based on the certiorari jurisdiction statute, 28 U.S.C. 1257), and not jurisdictional, holding that it applies only in cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." The Supreme Court has continued to narrow the doctrine, as in Lance v. Dennis, 126 S. Ct. 1198 (2006)seems to want to minimize the use of the doctrine. For a mock obituary of the doctrine, see

Samuel Bray, Rooker-Feldman (1923-2006) 9 Green Bag 2d, 317.

(2) Shaw alleges that the Complaint should not be dismissed for reason of a parent being prohibited from litigating pro se on the behalf of the children.

Shaw's motion to join the children with Shaw as their next friend (Joinder of real parties in interest), Docket 31 was denied. The "Memorandum Opinion", page 8, states "absent unique circumstances, a parent may not litigate a claim pro se on behalf of her children", with footnote, 5, stating the Court declined to broaden the exception to the general rule prohibiting parents from litigating their children's claims pro se. Shaw alleges this case does contain unique circumstances deserving of broadening the exception to the general rule. Shaw sought to find counsel to represent their rights and the rights of this parent. Although Shaw was advised by local counsel of the cause of action in this case, Shaw was unsuccessful with local attempts of obtaining counsel for such reasons as conflict of interest, understandable when one considers the professions of the defendants. Counsel outside of Lynchburg agreed to accept the case with a retainer of $150,000., which was beyond the reach of this parent. Shaw began research of pro se cases in an attempt to protect the rights of the children and herself, case of interest, Citation 282F Supp 2d, 439, in which the parent of a minor child filed as next friend of the child. Shaw proceeded with filing pro se, joining the three children.

The denial of joining the children under the circumstances given in Shaw's complaint is an unfair hindrance to Shaw, a natural parent with a legal obligation to protect the children, created by statute of sovereign, Virginia Code 16.1-228, and unfair to the children, deserving of protection of their constitutional rights. The "Memorandum Opinion" , page 8, footnote 6, states, "Regardless of whether Shaw's children were properly joined as plaintiffs in this case, however, the Rehabilitation Act and the ADA claims would fail because Shaw is prohibited from litigating those claims pro se on her children's behalf." The U.S. Court of Appeals for the First Circuit: "IDEA expressly contemplates that parents will act as advocates for their children at every stage of the administrative process, from initial IEP meetings to administrative due process hearings—A rule prohibiting pro se representation would subvert Congress's intent by denying many children with special needs their day in court. Where parents could not obtain representation or chose not to pay for counsel, many children with special needs would be precluded from exercising their statutory right to judicial review of their administrative due process hearings." Maroni v. Pemi Baker Regional School (1st Cir. 2003). "The interest of a child who is made a party to a federal court action in adequate legal representation also implicates federal concerns. As the Ninth Circuit has correctly recognized, "the infant is always the ward of every court wherein his rights or property are brought into jeopardy, and is entitled to the most jealous care than no injustice be done to him." Johns, 114 F, 3d at 877 (emphasis added).

(3) Motion to Quash Service on "Lynchburg Defendants" denied as Moot

Supporting Facts and Argument

Shaw alleges that the defendants are not accurately identified. The "Memorandum Opinion" page 2, January 29, 2009, states that "Aside from Governor Kaine and Attorney General McDonnell, the majority of the individual defendants are employees of the City of Lynchburg"with no reference given to defendant Mark Johnson. The Memorandum Opinion references Dr. Anderson as a licensed clinical psychologist that conducted court-ordered evaluation of Shaw's children in March, 2006, and not employed by the City of Lynchburg. However, no reference is given to Anderson's evaluation of Shaw, which is a most relevant fact upon which much of this civil case rest, directly relating to the Shaw's constitutional violations by Dr. Anderson under 42 U.S.C. 1983, 14th Amendment. This is referenced in Count 10 of the Amended Complaint. Shaw alleges the defendants, Barca and Parks, are state employees. Shaw alleges the defendants, Dr.Anderson, Dunn and Moore, acted as state actors, created by Virginia statute, as members of a multidisciplinary team, ref. Va. Code 63.2-1503. Defendant Mark Johnson, the director of the VDSS local agency, is alleged to be a public officer, with Virginia statute creating a position for him, both as one who "fosters" the multidisciplinary team and the person who conducts (or designates someone to conduct) the Local Conference of the VDSS agency appeal, allowing him to use discretion in decision making. The facts in the Amended Complaint

introduce Barca making contact with Anderson, psychologist, during her initial steps of a family assessment regarding allegations of physical abuse, and later introduces Dunn as counsel. The defendant, Dunn, was also a part of Barca's initial steps of the family assessment, May, 2006, of which Shaw had no knowledge. Shaw, having sole legal and physical custody of the three children,was unaware of this defendant's involvement until August, 2006. It is seemingly senseless that a caseworker would contact a psychologist and an attorney during such a job performance. When one recognizes Anderson and Dunn as state actors, acting as members of a multidisciplinary team created by statute, it is understandable that team members may contact other team members at any time for any cause. At the time Shaw filed an appeal with VDSS, September 2006, the local agency requested more time to seek counsel. Shaw alleges the defendant, Dunn, was not counsel for the agency but performed the role of a state actor as a team member. Accurate identification of all defendants is critical as it determines proper process of service, granting and dismissal of motions and other decisions, including but not limited to liabilities of parties and entities.

Civil Rights 78-1325. 78 Civil Rights 78III Federal Remedies in General, 78k1323, Color of Law, 78k1325k State or Territorial Action or Individual or Private Action, in General. Most Cited Cases Section 1983's "color of state law" requirement excludes from the reach of 1983 all merely private conduct, no matter how discriminatory or wrongful, but includes within its scope apparently private actions which have a sufficiently close nexus with the state to be fairly

treated as that of the state itself. 42 U.S.C. 1983

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283-116. 283 Officers and Public Employees, 283III Rights, Powers, Duties and Liabilities 283k115 Liabilities for Negligence or Misconduct, 283k116k In General. Most Cited Cases

While personal liability for mere negligence turns on question of whether individual is public officer or employee, distinction is immaterial if individual's actions are corrupt or malicious or are outside and beyond scope of his duties, both employees and public officers are liable for damages proximately caused by such actions.

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"A public officer is someone whose position is created by the constitution or statutes of the sovereign." *State v. Hord*, 264 N.C. 149, 155, 141 S.E. 2d 241, 245 (1965) "An essential difference between a public office and mere employment is the fact that the duties of the incumbent of an office shall involve the exercise of some portion of sovereign power." Id. Officers exercise a certain amount of discretion, while employees perform ministerial duties.

Discretionary acts are those requiring personal deliberation, decision and judgment; duties are ministerial when they are "absolute, certain, and imperative, involving merely the execution if a specific duty arising from fixed and designated facts." Jensen v S.C. Dept. of Social Services, 297 S.C. 323, 377 S.E.2d 102 (1988).

4. Relief Requested

To test the sufficiency of this Complaint, Shaw request that each count be considered for content of constitutional violation under 42 U.S.C. 1983 Fourteenth Amendment Section 1, 42 U.S.C. 1985 (3), Count 23 , and other parts of the constitution as stated within the Complaint for which Shaw and the children are entitled to relief. All counts are relevant, with some expanding explanations of previous ones without repetition. Some counts may require discussion or oral argument due to the allegations of the actions of the professional defendants that are in complete reversal from common expectations. Shaw is requesting in lieu of considering only the individual legal claims, reference in issues, that each Count be considered for disposal or survival as part of the decision of the Court.

Shaw request that each Motion, filed by all parties to this case, including affidavits or memorandum of laws if applicable, be reviewed, Considering the arguments filed herewith, certain determinations are critical in the decision(s) of the granting or dismissal of each.

5. Prior Appeals

Shaw has never filed a case in this court.

/s/ Tammy J. Shaw